

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**PATRICIA A. DUNN**  
Claimant

VS.

**SHAWNEE MISSION MEDICAL CENTER**  
Respondent  
Self-Insured

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Docket No. 208,759

**ORDER**

Claimant appeals from a preliminary hearing Order of Administrative Law Judge Steven J. Howard dated March 20, 1996.

**ISSUES**

The Administrative Law Judge denied claimant's application for preliminary benefits. He found claimant had not proven that she sustained an injury arising out of and in the course of her employment, citing Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980). He also found claimant did not make a timely written claim. At the preliminary hearing respondent also denied claimant had given timely notice. The Administrative Law Judge did not reach the notice issue because of his other rulings.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Appeals Board agrees with the decision to deny benefits but does so for reasons different from those given in the Order by the Administrative Law Judge.

Claimant seeks medical and temporary total disability benefits for a low back injury which her Application for Hearing alleges occurred repetitively through December 27, 1995. The evidence shows claimant suffered low back injuries on September 19, 1994 while lifting a patient and again in early 1995 when she fell from her chair at work. The more difficult issue, the one which the Administrative Law Judge undoubtedly had in mind when he found claimant did not show she had sustained a work-related injury, is whether claimant suffered repetitive compensable injury through December 27, 1995 as alleged. Timeliness of claimant's written claim also depends on this determination.

The Appeals Board considers the greater weight of evidence presented at the preliminary hearing to support the conclusion that claimant did suffer repetitive work-related

injury through December 27, 1995. This conclusion is supported by the report of Dr. Allen J. Parmet which states in part as follows:

"Within a reasonable medical certainty, this injury is job related as a result of several reported incidents as well as continuous and repetitious lifting in the work environment. Despite knowledge of her back problems, she was not provided accommodation by her employer. Clearly, the condition progressed over time until she was finally incapacitated as of December 21, 1996 [sic] and demonstrated on January 15, 1996 by myelogram and MRI scan."

The weight given this medical opinion is substantially lessened by the absence of specific testimony by the claimant to substantiate that opinion. The opinion appears, nevertheless, to be otherwise unrebutted in the record. The Appeals Board therefore concludes, based upon the evidence presented, that claimant did suffer repetitive injury through approximately December 27, 1995.

Based upon the above understanding of the evidence, the Appeals Board also considers distinguishable Martin v. U.S.D. No. 233, *supra*, the case cited by the Administrative Law Judge. In that case claimant suffered a low back injury after he pulled into the parking lot of his employer, Fairview School. He testified he felt a sudden sharp pain in his back and down his leg when he unlocked the door and twisted. The injury was treated by the Court of Appeals as one arising from a personal risk, not a risk associated with employment. Benefits were denied.

There is evidence in this case that claimant's personal activities caused claimant back problems during the period of the alleged injury at work. There is also evidence, however, that claimant did a substantial amount of lifting of patients as part of her normal work. If those work activities were, as suggested by the report of Dr. Parmet, a cause of claimant's injury, the injury then arose out of a risk associated with claimant's work activities and is compensable.

As respondent acknowledges, claimant's Application for Hearing filed January 24, 1996, was a timely written claim for repetitive injury through December 27, 1995.

The third issue raised at the preliminary hearing was whether claimant had provided timely notice as required by K.S.A. 44-520. Claimant has not provided any testimony or other evidence indicating that she gave such notice. She testified she left work in late December 1995 and did so because she wanted to see if time off would help her back pain. She provides no testimony to indicate what, if anything, she told respondent at that time. She also testified that sometime in January she gave respondent a note from a chiropractor who took her off work. The note was not offered in evidence and its contents are not described. She does not indicate the specific date she gave this note to her employer.

The record also contains no evidence regarding whether claimant had just cause for not giving notice within the time required. Claimant does testify she did not know she had a work-related injury until sometime after she left her employment. However, she testified she left her employment to obtain relief from her back injury. Under the

circumstances, the record does not explain why claimant did not give notice of the problems she was having with her back at work and does not establish just cause.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Steven J. Howard dated March 20, 1996, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1996.

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BOARD MEMBER

c: Steven C. Alberg, Overland Park, KS  
H. Wayne Powers, Overland Park, KS  
Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director